



UNIVERSITY OF
TORONTO
FACULTY OF LAW



CONSTITUTIONAL THEORY

INTENSIVE COURSE

**Professor Hamish Stewart and
Distinguished Visiting Professor Michel Troper**

Fall 2010

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Materials for Constitutional Theory

Michel Troper and Hamish Stewart

Faculty of Law, University of Toronto

September 2010

First Session: Sovereignty and Representation

- 1-1 Michel Troper, "The survival of sovereignty" p. 1
- 1-2 Hans Kelsen, excerpt from *Pure Theory of Law*, 2d ed. p. 17

Second Session: Judicial Review of Statutes

- 2-1 excerpts from *Marbury v. Madison* p. 26
- 2-2 excerpts from *Reference Re Motor Vehicle Act* p. 33
- 2-3 Michel Troper, "The Logic of the Justification of Judicial Review of Legislation" p. 36
- 2-4 Michel Troper, "Marshall, Kelsen, Barak and the constitutionalist fallacy" p. 59
- 2-5 Hans Kelsen, "Judicial Review of Legislation" p. 74

Please also read the Conseil Constitutionnel's webpage on "priority preliminary rulings":

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/priority-preliminary-rulings-on-the-issue-of-constitutionality/priority-preliminary-rulings-on-the-issue-of-constitutionality.48002.html>

Third Session: The Separation of Powers

- 3-1 Montesquieu, *The Spirit of the Laws*, Book 11, Chapters 1-6 p. 92
- 3-2 Immanuel Kant, *The Metaphysics of Morals*, §43-48 p. 99
- 3-3 Michel Troper, "The Concept of a constitution and the principle of the separation of powers" p. 102
- 3-4 Wojciech Sadurski, "Judicial Review, Separation of Powers and Democracy" p. 104

Fourth Session: Law and State; *Rechtstaat* and The Rule of Law

- 4-1 Joseph Raz, "The Rule of Law and its Virtue" p. 132
- 4-2 Michel Troper, "The Limits of the Rule of Law" p. 141

Fifth Session: What is the Constitution?

- 5-1 excerpts from *Reference re Secession of Quebec* p. 159
- 5-2 Michel Troper, "Constitutional Interpretation" p. 163

Sixth Session: The Hierarchy of Norms

- 6-1 Hans Kelsen, excerpt from *Pure Theory of Law*, 2d ed. p. 179
- 6-2 Decision 74-54 DC of 15 January 1975 of the Conseil constitutionnel p. 196
- 6-3 Decision 92-313 DC of September 23 1992 of the Conseil constitutionnel p. 198
- 6-4 Decision No. 169219 of 3 July 1996 the Conseil d'Etat p. 199
- 6-5 Decision 2006-540 of 27 July 2006 of the Conseil constitutionnel p. 201

Seventh Session: State and Religion

- 7-1 Michel Rosenfeld, "Can constitutionalism, secularism and religion be reconciled in an era of globalization and religious revival?" p. 212
- 7-2 Michel Troper, "Sovereignty and Laïcité" p. 248